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THE NEW REPUBLIC

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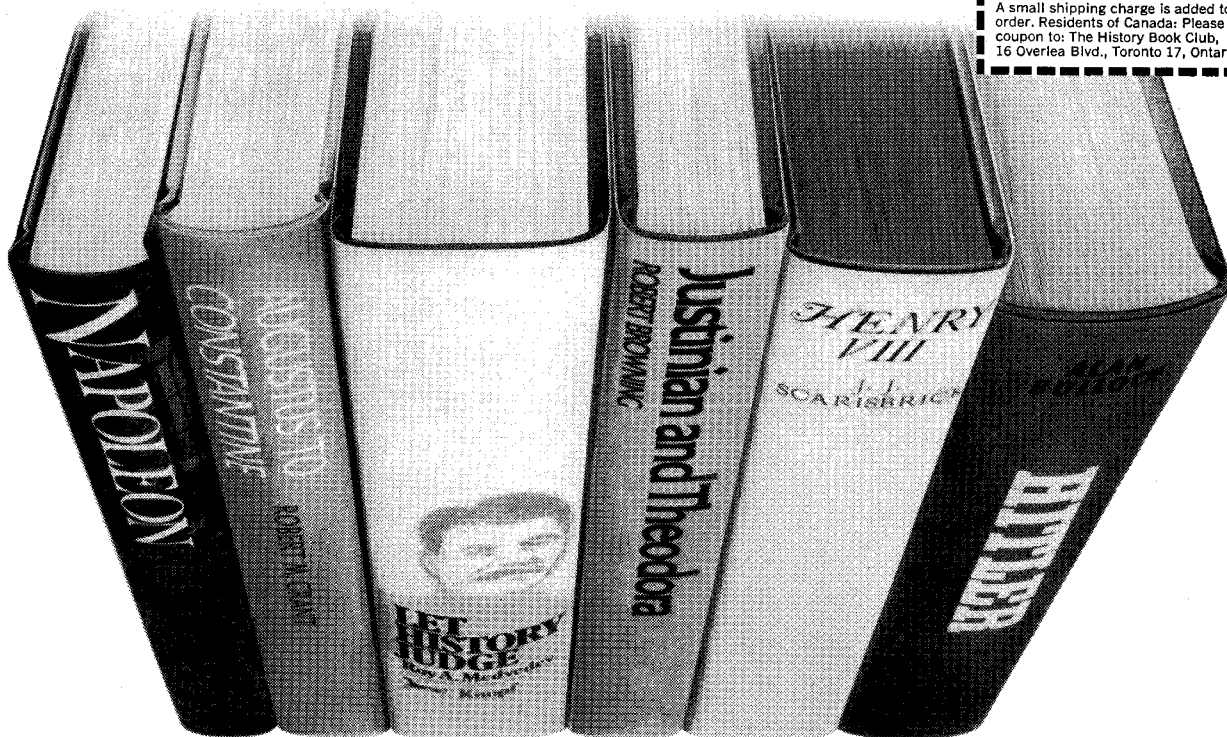
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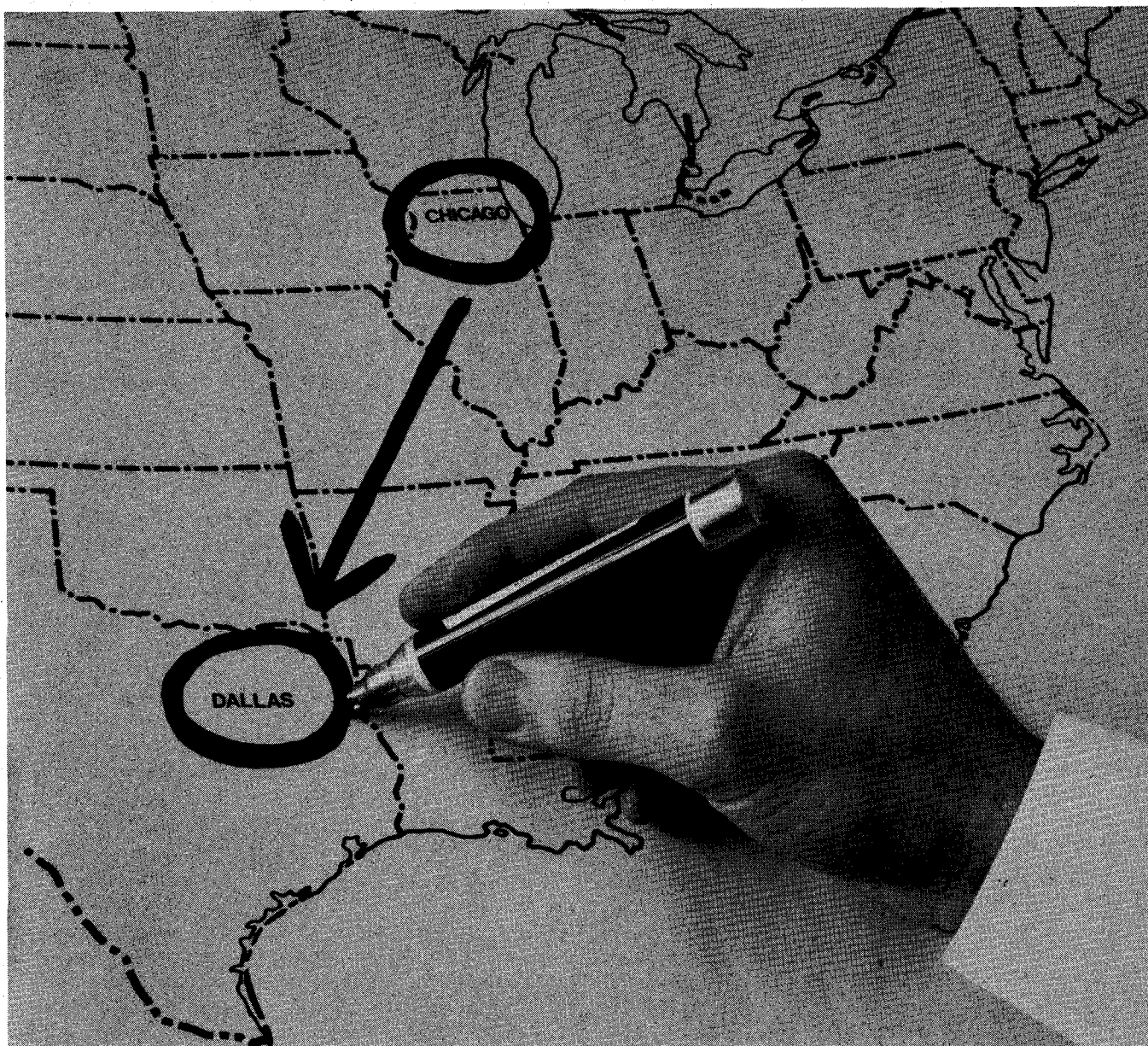
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from Miami Beach

July 15, 1972

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Either Or

We think it is not beyond the bounds of possibility that George McGovern, if nominated, will defeat Richard Nixon next November and we warn readers now not to take the auguries of the poll-takers too seriously until the campaign develops a bit. What should not be forgotten is that, divided as Democrats are, the great unifier is Richard Nixon. It is true that luck seems to be on the side of the GOP and that John Mitchell has stepped down (officially at least) as the campaign manager of Mr. Nixon but we doubt if this advantage, by itself, is decisive. The portents, in fact, are uncertain. There is going to be a solar eclipse this Monday as Democrats assemble, which is obviously a signal of something or other but we guess that astrology is no more reliable than Gallup at this stage.

After the 1968 Chicago convention Gallup reported (Aug. 21) Nixon 45 percent; Humphrey 29; Wallace 18; Uncertain 8. That was a Nixon lead of 16 percentage points, an apparently irreversible advantage. Even on Oct. 10, *The Times* reported, "Gallup Poll Finds Nixon is Maintaining Large Lead." But wait a bit! The final Harris survey announced that "Humphrey Broke Through to a 43 to 40 Percent Lead over Nixon; Wallace 13 Percent and 4 Percent Undecided."

The actual result was, of course, a sensational dead-heat of less than 1 percent—Nixon 43.4 percent; Humphrey 42.7; Wallace 13.5, and 15 million registered voters sitting it out. Why didn't they vote? Maybe they had seen by the polls that a Nixon victory was a cinch and didn't bother.

When this column in 1968 twitted the long-suffering Gallup organization that the Humphrey emergence had not been forecast, a spokesman replied patiently, "Not so!" From Sept. 28, he wrote, "HHH gained on the average about

one-third of a point a day." Many people, he accurately noted, "changed their mind during that period."

In the meantime, the convention process you are now about to watch is a uniquely American invention; it is preposterous in nearly every way and the aggravating thing is that it works pretty well. How can 5000 delegates and alternates, 80 percent of whom have never attended a convention before, meet for a presumed five days, and pick the right man for the most powerful job on earth? In that time they will hardly have a chance to find where the convenient quick lunches are, let alone the rest rooms! And yet the incredible performance goes on fairly well, as it does every four years, with the Democrats this time fighting to stay alive, and the Republicans to stay awake. What stands out on the eve of the convention is the enormous power of the temporary chairman, Lawrence O'Brien, to make rulings on credentials that may decide the outcome.

As an afterthought both parties in a sleepy final session will also ratify the choice of a Vice President, normally picked as the opposite of their chiefs, often incongruously. In 1884 Blaine and his running mate Logan detested each other and a versifier put it, "We never speak as we pass by/Me to Jim Blaine, nor him to I." Radical Bryan, 36, found himself linked to a Maine banker, Arthur Sewall, 81. In 1940 Willkie had never before met Senator Charles McNary. And how many can tell today who was Goldwater's running mate? (All right, we looked it up—it was Congressman William E. Miller, NY.) There have been 15 occasions when there was no Vice President at all (a total of 36 years) and nobody was any the worse for it.

This is too flippant a way, however, to introduce what may be one of the most momentous conventions in American history. Anybody can see with half an eye that there are issues at stake here whose handling will affect American politics for a generation. On the mechanical side the Democratic party is trying to reform itself and our guess is that neither party is ever going to be the same again. We have always wondered why American political parties, unlike European counterparts, don't have biennial or annual meetings of some sort. There now seems a good chance that the Democrats will try this. We guess that the Republicans will follow, if the trend is to more disciplined parties. Among Democrats there is an

almost classic struggle between "Regulars" and the "Outsiders," with the latter making a revolutionary power play to take over the party. We aren't sure that simplistic reforms that give proportional representation to women, minorities and youth are the final answer but the mass infusion of new delegates and wider participation in the mystical process of electing an American king is of extraordinary interest.

Into this drama emerges the accidental figure of George McGovern. President or not, we suspect his emergence will never let the scene be quite the same again. The horror of some middle-class columnists in discovering that McGovern not merely advocates a more equitable sharing of America's wealth, but really means it, is funny. He is asking the right questions, what to do about the growth of corporate power, the dominance of economic giants, the corrupt relationship of big business and politicians, the disparity of wealth among "haves" and "have-nots." McGovern is accused of offering figures that don't add up, but it should be said in all fairness that Mr. Nixon has been trying to add up his budget for four years and appears to have missed the mark by \$100 billion so far.

From the political viewpoint McGovern has probably made a mistake to let the election be a test of his economic program. Voters normally vote *against* somebody and this year should be a referendum, for good or ill, on Mr. Nixon. Are voters satisfied with the economy and unemployment around 6 percent? Are they content with taxes that widen the gap between rich and poor yet don't balance the budget? Are they happy with smart bombs and mined harbors, with smashed electric plants and dikes, a policy that adds up to the crucifixion of a small nation?

Maybe McGovern is unwise in the short run to offer distracting economic proposals now but America is here for the long run, and sooner or later his ideas must be discussed. In the meantime, now as always, you can tell the difference between a Democratic and Republican convention in a glance. The Republicans are comfortable chamber of commerce types, with ladies in blue hair rinse, eager to let the Jews and Irish know they sympathize. The Democrats are younger, noisier, cruder, with the great weight of world problems on their shoulders. That's the difference. We advise you not to lay your bets on the result for a while yet.

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Mixed Reviews

The Supreme Court confounded its friends and critics as the curtain came down on its 1971 term, June 29, delivering one of the biggest surprises in its history and several severe disappointments. The surprise was the abolition of capital punishment—as it is currently practiced—on the ground that it violates the Eighth Amendment's cruel and unusual punishment clause. The most zealous advocates of abolition had resigned themselves to defeat, expecting only the votes of the hard-core liberal bloc of the Court—Justices Douglas, Brennan and Marshall. The unexpected votes against capital punishment were those of Justices Stewart and White, who concluded, in separate opinions, that there was no rational basis for putting to death the few convicted felons who were under a sentence of execution when others whose crimes were equal or worse were not similarly treated. Justice Stewart compared the "freakish" imposition of the death sentence to "being struck by lightning" and Justice White said that "there is no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not."

The majority of the Court rejected the view pressed by the four Nixon appointees who dissented, that whether or not to keep the death penalty was properly a legislative matter and should be decided only by Congress and the state legislatures and not by the courts. This is a refrain common to most of the Court's historic decisions. When it was considering the constitutionality of school segregation in the early fifties, the Court was told that the issue should be left for Congress to decide—and that view temporarily persuaded some of the justices. When, in the early sixties, the inequities caused by mal-apportioned state legislatures were the subject of litigation, those who sought to restrain the Court insisted that such political questions were the exclusive province of the legislatures themselves. And the dissenters in the capital punishment cases repeatedly expressed deference to "the legislative judgment." Chief Justice Burger observed that if he were a legislator and not a judge, he would eliminate the death penalty for almost all cases, but he viewed his role as a judge to be more limited.

The majority properly dismissed this argument. It is hopelessly unrealistic to think that the approximately 600 men who were on death row—even if assisted by the highly capable lawyers who pressed

their cases in the courts—could mount the lobbying effort and have the political power to effect any change whatever in local laws. This is particularly true in a period when public opinion is inflamed over law-and-order and legislators are unlikely to take the risk of unpopular, though principled, positions.

Plainly, as Justice White noted in his opinion, the Supreme Court has a more complete overview of the capital punishment problem than any legislature. It is the Court which has "almost daily exposure to the facts and circumstances of hundreds of federal and state criminal cases involving crimes for which death is the authorized penalty." There has probably not been a capital case in the last 20 years which was not presented to the Supreme Court for review. So it is the Court which is best situated to reach judgments on the rationality and deterrent effect of executions.

Justice White joined the Nixon appointees, however, in three other important cases which upheld the powers of the federal government as against claims of constitutional privilege, and in one of the cases Justice Stewart lined up with that majority. One case was designed to test whether an aide to Senator Mike Gravel could be called before a federal grand jury and required to answer a prosecutor's questions regarding the senator's receipt of and attempts to publish the Pentagon Papers. Justice White, speaking for a five-man majority, allowed the prosecutor authority beyond what the solicitor general, on behalf of the government, had requested. Explicitly rejecting the solicitor general's flat admissions that Senator Gravel was entitled, by the constitutional shield for a federal legislator's "speech and debate," not to be questioned about the source of information used in a debate or legislative hearing, Justice White's opinion permitted the senator himself to be called before the grand jury and asked about anything other than what he did during the meeting of the subcommittee of which he was chairman.

In a parallel action which involved analogous constitutional issues, Justice White wrote an opinion for himself and the four Nixon appointees which permitted federal and local prosecutors to question news reporters before grand juries about the sources of their information. The claim of a "newsman's privilege" to keep sources confidential has been recognized by statute in several states, and three cases before the Court raised the question whether it was not constitutionally required as part of the First Amendment's guarantee of freedom of the press. Here again, the Court majority issued a sweeping decision based, in Justice Stewart's language in dissent, on a "crabbed view of the First Amendment" and a "disturbing insensitivity to the critical role of an independent press in our society." What is worst about the majority's view is not that it refused to grant reporters total and absolute immunity from questioning. There may certainly be good reason for newsmen to provide sources when that infor-

mation is essential to an overriding public purpose. But the Court failed to recognize any difference between a reporter's claim and that of any other witness called to answer questions. And, what is worse, it failed in these cases—as in the case of Senator Gravel—to distinguish between the questioning of a grand jury—which is, for all practical purposes, an arm of the prosecutor—and questioning during a trial when a presiding judge is available to protect the interests of the witness and when a lawyer has direct access to the witness and can respond immediately to questions asked of him.

The third of the three disappointing decisions upheld the federal government's broad unreviewable power to exclude visitors to the United States on account of their political opinions. Just ten days earlier, in striking down warrantless wiretapping, the Court had eloquently (and unanimously) warned against unchecked and unreviewable actions by the Justice Department which affected First Amendment rights. But by a six-to-three vote (with the Nixon appointees again lined up together) it permitted the Immigration and Naturalization Service, acting as the attorney general's agent, to exclude from the United States a Belgian scholar and journalist named Ernest Mandel who was coming to speak at Stanford, Princeton, Amherst, Columbia and Vassar. The applicable statute is breathtaking in its sweep, and the Court did not pretend to review how sound was the Immigration Service's judgment. Although it recognized that prior decisions gave Dr. Mandel's prospective audience a constitutional right to hear him, it brushed aside their argument that a court should determine whether that constitutional right had been improperly denied by the Immigration Service.

Possibly the unhappiest element in the various decisions issued by the Court on June 29 was the regularity with which the four Nixon appointees swung into line on the major issues. In the death penalty cases, they joined each other's separate dissenting opinions (with the exception of Justice Blackmun's "personal comments"). This was a striking contrast to the five majority justices, each of whom, in a show of individuality, wrote a separate opinion expressing his views and his views alone. And in the *Gravel*, *Caldwell* and *Mandel* cases, none of the Nixon team broke ranks. The Court has managed to weather many storms and, by and large, it maintains the respect of the public because of its independence from political pressures. Past Presidents have not succeeded, as fully as Mr. Nixon appears to have done, in predicting how their appointees would vote. Eisenhower, after all, appointed men like Earl Warren and William J. Brennan as well as John Marshall Harlan and Charles Whittaker. And President John Kennedy were he alive today would probably be surprised at some of the votes cast by Byron White. But the single-mindedness of the Nixon team threatens the image of the Court as an independent institution.

Credentials Hijacking

One undisputed fact in the Democrat's California credentials fight was that everyone understood that winner-take-all primaries were discouraged, but legal under the national party's reform rules. When the candidates campaigned and when the voters voted, they did so in the belief that whoever captured a plurality would get all 271 votes. But the action of a sharply divided credentials committee retroactively changed the rules thereby stripping away 151 McGovern delegates. It also caused McGovern to make a few intemperate comments about his opposition and set off a flurry of legal actions.

McGovern's attorneys joined those of Mayor Richard Daley — whose band of 59 uncommitted delegates had also been denied seats — in attempting to get the committee's decisions reversed in court. McGovern won and Daley lost. For both cases, a Washington, DC federal appeals court upheld the right of national party conventions to take actions which contravene state law; but it reached different conclusions in the two cases. For California, the court admonished the Democratic Party to abide by its own rules. Since the national party had affirmed the legality of plurality or majority-rule systems for selecting delegates this year, the court said it could not arbitrarily establish and enforce a different standard. Saying that the integrity of the political process rests on the assumption that clear rules be established and enforced consistently, the court not only voided the decision of the credentials committee, but by ordering the party not to unseat McGovern's California delegates it seemed to head off the possibility of a minority report and floor fight, thus ending the Great Credentials Hijacking of 1972.

For Mayor Daley, the court reached a different decision. In upholding the right of the convention to unseat his delegates, the judges also settled the question of whether the McGovern-Fraser reforms impose an unconstitutional quota system for representation of young people, women and blacks. All the rules require, said the court, is that state parties take affirmative steps to overcome the effects of past discrimination. The credentials committee itself provided no evidence that quotas would be imposed. A body guided almost solely by considerations of whose ox was being gored, it seated Hawaii with 4 women of 20, and Connecticut with only 2 of 51 delegates under age 30. Those two states delegations will look more like the Democrats of 1968 than anything else.

Without regard to whether the Supreme Court would choose to review the appeals court decisions, Mayor Daley planned to continue to fight, on a different front. One of Daley's lawyer-aldermen passed the word that if the "Chicago 59" were shown the door, the mayor's organization would sue to keep the names of the Democratic nominees off the Illinois ballot in November.

The Nixon Watch

Person-to-Person

Laguna Beach, California

The word that seeps from the President's home in San Clemente to the hotel in this resort town where the reporters and his press party are staying, 12 miles up the warm and sunny coast, is that he is in California until mid-July for two principal purposes. One of them is to get the rest that he's needed ever since he made his exhausting trip to Peking four months ago and, according to some of his associates who see him in his private moments, has shown increasing signs of needing since he returned from Moscow. His other purpose, the one with which this report is concerned, is to decide at leisure and away from the pressures of Washington how to conduct his campaign for reelection.

That decision must turn in part upon the nature and outcome of the Democratic convention at Miami Beach. But I have an impression, in the main from interviews in Washington during the fortnight before the President flew to California, that it will largely turn upon Mr. Nixon's appraisal of himself and upon his judgment of how he may best present himself and his first-term record to the country. The required judgment is whether the President himself, Richard Nixon in person, is a more attractive and less repellent figure in 1972 than he knew himself to be in 1968 and found himself to be again in 1970 when he campaigned, with a lack of success that he privately and effectually recognized, for Republican congressional candidates. It is the question and the problem that one of the President's assistants, Patrick Buchanan, had in mind when he told a CBS interviewer the other day that the pre-nomination television effort in 1968 was "structured" to counter the view of "most Republicans" that "Mr. Nixon's personality is not all that good." His judgment as to whether his 1972 personality is "all that good" may be expected to determine the extent to which he stumps the country as candidate Nixon and the extent to which he relies upon his identity and performance as President Nixon to persuade the electorate that he should have a second term.

The assumption at the White House when the President left for California was that his Democratic opponent would be Senator George McGovern. This prospect was taken far more seriously than the national polls and the disarrays then evident among the Democrats might have led anyone to assume. The major though not the only reason was that George McGovern is perceived to be a more attractive and credible and decent person than the President is perceived to be. The point is not that the President's assistants and advisers perceive McGovern and Nixon in this way. They do not. The point is the impression, the overwhelming apprehension of the Nixon people, that Sen.

McGovern has succeeded and, despite his pre-convention troubles, may continue to succeed in projecting himself to the electorate as the more attractive and credible and decent man of the two. I heard much more talk about the perceived personalities of Richard Nixon and George McGovern than I heard about McGovern's recent maneuvers and equivocation and about the shambles that the Democratic convention could prove to be.

The shorthand truth, not greatly oversimplified, is that the possibility of a head-to-head encounter between Nixon and McGovern, a campaign allowed to be chiefly and basically a contest of personalities, scares some of the President's political advisers and assistants. They are determined not to let it become that kind of campaign and they are praying that the President will agree with them that he might very well lose such a campaign. This is why they are talking up and urging upon him a campaign "on the issues" and, among other things, organizing an enormous research effort, drawing upon all of the informational resources of the federal establishment. It is aimed at demolishing the McGovern position on tax reform, income redistribution, defense cutbacks and the like with Nixon versions of "the facts" instead of relying upon the generalized charge, Agnew-style, that George McGovern is a radical revolutionary engaged in subverting the traditional American verities.

There will be plenty of that sort of rhetoric, capped with the charge that McGovern's advocacy of early and total American withdrawal from Indochina amounts to a call for shameful surrender. In quarters near the President, however, the inquirer detects a suspicion that this line of talk about and against Sen. McGovern won't wash. One of the President's political pragmatists, Harry Dent, has seen some samples of McGovern's TV spots and has reported that the candidate who comes across from them conveys to the viewer a conviction of simply honesty and sincerity that has little if anything to do with the declared McGovern positions, including those thought at the White House to be most vulnerable to gut attack. There is a feeling, a genuine and expressed fear, that attempts to impugn McGovern's integrity and loyalty will or would serve to magnify his personal appeal and assist him in promoting the impression that he is a fundamentally decent man who is up against a fundamentally indecent opponent. A related feeling, not expressed in so many words but clearly implied, is that the President will do himself a grave and perhaps disastrous disservice if he succumbs once more, as he did in 1970, to his inclination to go for the jugular and thereby emphasizes the perceived contrast between him and McGovern. A politician in White House employ who professes to be quite sure that Mr. Nixon has no such intention thinks it nonetheless in order to say, "it would be a great mistake, the way to defeat."

The assumption, just short of certainty, that Mr.

Nixon currently intends to keep Spiro Agnew on the ticket is a cause for unease tempered by the further assumption that the Vice President's savage tendencies can and will be brought under adequate White House control. A study of the speeches the Vice President has been delivering since April suggests that this may not be as difficult as his critics are likely to suppose. Along with Agnew's customary scatter-gun invective, there is a heavy injection of researched fact (or alleged fact) that may be read to indicate that he is adjusting himself to the prospect of a judiciously restrained campaign "on the issues."

A cause for comfort at the White House is the abrupt departure of John Mitchell from the Committee for Reelection of the President and his replacement by Clark MacGregor, a former Minnesota congressman who has been on the White House staff since early 1971. MacGregor's assets include the fact that he is accustomed to taking orders from the two White House assistants, H. R. Haldeman and John Ehrlichman, to whom lesser Nixon minions look for political direction. During his brief tenure at the committee, after he ceased to be attorney general, Mitchell worked and consulted more closely with Haldeman and Ehrlichman—particularly with Haldeman—than was generally realized. But his high standing with the President, his equally high estimation of himself, and his stature as a former Cabinet officer precluded the degree of direct White House control of the developing campaign that a good many people around Mr. Nixon anticipate and would believe to be necessary. The satisfaction over Mitchell's departure implies no doubt that he quit because and only because he said he did, for the sake of his family and at the insistence of his troubled wife, Martha Mitchell. I hear and am disposed to believe that the satisfaction goes all the way up to the President. Mr. Nixon, acknowledging that mistakes were made in the 1970 campaign for congressional supporters, has said that when it's his campaign, he runs it. Now he's free to do so.

John Osborne

ULMS and Arms Control

ULMS is the acronym for the Undersea Long-Range Missile System, which the navy hopes will succeed its Polaris and Poseidon submarines. It is a three-part program. ULMS 1 is a ballistic missile with a range of 4500 (nautical) miles which can be adapted to the 31 submarines in the 41-ship Polaris fleet that are currently being converted to carry the Poseidon missile.

The ULMS 2 missile, which will have a range of 6000 miles, will be too large for a Poseidon submarine: it is planned for use on a new submarine, the Trident. Fully armed with 24 submarine-launched ballistic missiles (SLBMs), each Trident is expected to cost more than one billion dollars. The navy program currently calls for ten Tridents at an estimated cost of \$11.2 billion. Last year Congress appropriated \$104 million for ULMS. This year the Pentagon is asking for a huge increase: \$977 million.

Last year, appearing before the House Armed Services Committee, Secretary of Defense Melvin Laird referred to ULMS and the B-1 bomber as the "two most significant of our on-going long-range developments." Work on ULMS, he said, was proceeding "deliberately so as to preserve options on performance characteristics and to shorten the leadtime for deployment should this become necessary in the future." ULMS was a program which would, Laird said, "preserve the flexibility to capitalize on opportunities as they appear, counter threats which may emerge in the future, and *respond to changes emerging from SALT.*" (Italics added.)

One of the changes which emerged from SALT was a limitation on ballistic-missile submarines. The United States is permitted 44 submarines and 710 SLBMs, and the Soviet Union is allowed 62 submarines and 950 SLBMs. The Soviet numerical edge is more than offset by the American lead in multiple independently targetable reentry vehicles (MIRVs). Since the Polaris-to-Poseidon conversion began in 1970, 10 submarines have been refitted with the new missiles. With 10 MIRVs on each of a submarine's 16 SLBMs, the Polaris and Poseidon fleet is now capable of hitting about 2100 separate targets. When the thirty-first Poseidon is completed in 1976, the US will have more than 5100 SLBM warheads. The Soviet Union has not yet tested MIRVs (although Secretary Laird expects it to in six to nine months), and unless the USSR can develop and deploy them on its submarines within four years, Russia will soon find itself on the short end of a five-to-one SLBM warhead gap. That is a disadvantage the Russians are certain to try to offset.

On February 1, Secretary of the Navy John Chaffee rationalized the more than nine-fold increase in ULMS funding as the result of failure of the SALT negotiations. In an appearance before a House Appropriations subcommittee, Chaffee said, "We had been holding back on ULMS development in hopes that progress toward strategic arms limitation would allow us to defer construction to the time when our Polaris and Poseidon submarines come due for replacement." (Assuming a 30-year service life, the first Polaris submarine, the USS George Washington, would not be due for replacement until 1990.) Two weeks later, Secretary Laird called the acceleration of ULMS a "signal to the Soviets . . . in the face of a growing Soviet threat." (The Soviet Union is thought to have 25

Y-class ballistic-missile submarines, and 17 more are reportedly under construction.) On May 26, when the offensive arms agreement was signed, that "growing Soviet threat" was given its upper limit. Instead of returning to the original ULMS schedule, which would have the first Trident at sea in 1981, Secretary Laird threatened to oppose the SALT agreements if Congress "fails to act on the movement forward of the Trident system." His pre-SALT plan to have the first Trident deployed in 1978 remains unchanged.

No matter how shaky its case, the odds now favor the Nixon administration's getting almost one billion dollars for ULMS this year. The House Armed Services Committee approved the full \$977 million, and a floor amendment offered by Congressman Robert Leggett (D, California) to delete \$700 million from the authorization was shouted down in a voice vote on June 27. The Senate Armed Services Committee also approved the full authorization for ULMS, but its sailing was not so smooth. A motion by Senator Lloyd Bentsen (D, Texas) to delete all of the procurement funds for ULMS (\$422 million) failed to carry on a tie vote of 8 to 8. The last chance to slow ULMS will be on the floor of the Senate.

Opponents of ULMS are expected to organize their effort after the Senate recess for the Democratic convention. Senator William Proxmire (D, Wisconsin), the Senate's most effective Pentagon critic, is expected to lead the opposition. He is in a strong position to do so because last year he was such an ardent supporter of ULMS (he now admits) that he "contended that the Defense Department was going too slow on it." He has since changed his mind, and while he is still supporting, "with enthusiasm," the \$330 million earmarked for the ULMS 1 missile, he would allow \$50 million (instead of \$600 million) to continue development of ULMS 2 and the Trident submarine. (A report of Members of Congress for Peace through Law puts the program cost of ULMS 1 at \$6.7 billion.) Proxmire's support of ULMS 1 could attract Senate moderates who believe the accelerated Trident schedule is unnecessary but would be opposed to eliminating funds for ULMS 1 which could be used on the Poseidon submarines. From the standpoint of practical politics, there is much to commend the Proxmire position. From the standpoint of the strategic nuclear balance, however, even ULMS 1 is too much too soon.

The ULMS 1 missile will be very similar to the Poseidon SLBM with its MIRV payload. The significant difference between them is in range: 4500 miles for ULMS 1 and 2500 miles for Poseidon. Greater range will, of course, give navy planners greater flexibility. Instead of targetting Moscow with a Poseidon from the North Atlantic, they could fire an ULMS 1 from, say, Long Island Sound. With the Trident submarine and the 6000-mile ULMS 2, the capital of the USSR could be leveled from the Caribbean Sea. Does the

navy really need such long-range missiles?

The Soviet defensive threat to US Polaris and Poseidon submarines is not considered by military analysts to be a serious one. On February 1, in an appearance before the House Appropriations Subcommittee on the Department of Defense, the chief of naval operations, Admiral Elmo Zumwalt, said, "Our present Polaris/Poseidon system is excellent now and is highly capable for the near future against threats that we anticipate the USSR is likely to develop." Part of the rationale for the decision to accelerate ULMS, Zumwalt said, was "the reluctance to date of the Soviets to include sea-based strategic forces in an interim SALT agreement." With that rationale no longer valid, thanks to SALT, the development of ULMS 1 on an "urgent basis to protect an option to deploy it in Poseidon submarines as early as 1977-78" would be justified only if there were a near-term anti-submarine warfare (ASW) threat. Specifically, the Soviet Union would have to develop an extensive ASW net which would preclude our firing SLBMs within 2500 miles of her borders: an area about half the size of the northern hemisphere. Not only would the Soviets have to be able to find and track every Poseidon submarine, they would have to be able to destroy *all* of them simultaneously in a surprise attack because just one surviving submarine would be able to destroy 160 separate targets with nuclear warheads of more than twice the yield of the A-bomb that leveled Hiroshima. No one, in or out of the Pentagon, has suggested that the Soviet Union has the technology and resources to contemplate the building of an ASW

system of this magnitude.

By agreeing "not to deploy ABM systems for a defense of the territory of its country," the United States and the Soviet Union acknowledged their vulnerability to each other's nuclear missiles. Thus, the ABM treaty gave formal recognition to a fact long known to nuclear strategists: no matter who strikes first, the other superpower will still have sufficient nuclear weapons to devastate the attacker's homeland. This is nuclear "equality," and when both sides possess several thousand nuclear weapons, even a doubling by one side will not change it. The United States can maintain nuclear equality *vis-à-vis* the Soviet Union by maintaining the *potential* to match large Soviet increases should that become necessary. At the present time the United States has twice as many nuclear warheads as the Soviet Union and will have four times as many when the interim offensive arms limitation pact expires in mid-1977 unless the Soviet Union can develop and deploy about ten thousand MIRVs over the next five years. While the United States should not encourage Soviet dreams of nuclear superiority by failing to maintain the potential to increase its arms, neither should it inspire Soviet fears that it is still pursuing the nuclear superiority chimera.

Peter J. Ognibene

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How to Stop Unjustifiable Eavesdropping

Pulling the Plug On the FBI's Bug

by **Nathan Lewin**

Attorney General Richard Kleindienst sent a career deputy assistant attorney general to testify at a Senate Judiciary Subcommittee hearing on the effects of the Supreme Court's decision banning wiretapping in "domestic security" investigations without a court

warrant. The emissary's prepared statement carried the attorney general's assurance to Congress that he was instituting "full and ungrudging" application of "both the letter and the spirit" of the Court's ruling. But when Senator Kennedy, the chairman of the sub-

committee, asked how many taps and bugs had been removed as a result of the Court's decision and how many which had never been approved by a judge were still in place, the figures left one wondering whether here again—as former Attorney General Mitchell suggested of his own record—we should be watching what the Justice Department does and not what it says.

The astounding statistics were that only six “installations” had been cut off after the Court's decision and 27 remain. All but a minute number of the current taps, Senator Kennedy was assured, fall within the “foreign organization” category. When pressed, the Justice official said that the number of “domestic organizations” now being tapped or bugged was “less than three,” and the presumptive basis for eavesdropping on these is that they have a “substantial connection” with “foreign powers.”

The testimony stressed only one of the many obstacles that stand between the Supreme Court's pronouncement of constitutional doctrine and its implementation. No one can deny that the Court's decision was a great triumph of principle. By a unanimous vote the Court repudiated the assertion first made sweepingly by Attorney General Mitchell that the Constitution permits him to be both prosecutor and judge of whether private conversations are so likely to endanger national security that they should be overheard by the FBI. The issue, Justice Powell said in the first sentence of his opinion (written for six members of the Court, including even Justice Blackmun, though not Chief Justice Burger), was “an important one for the people of our country and their Government.” And his decision was that the people could be assured that “their Government” could overhear their private conversations only if the evidence justifying such an intrusion was submitted to “prior judicial judgment” and approved by the issuance of a court warrant. This, the Court said, was the “independent check upon executive discretion” required for any other government search for evidence, and no less can be tolerated even if the attorney general honestly believes national security is endangered by the activities of a domestic organization.

A judge's warrant is better than nothing, and nothing—other than the attorney general's say-so—was the rule followed by the Justice Department until the Court's decision. But no one familiar with the actualities of law enforcement can have much faith in the warrant procedure. A search warrant has to be obtained in secret. (Obviously, the target of the search cannot be told well in advance that officers will come looking for evidence.) In nearly all cases, the

prosecutor's application and evidence supporting the search are submitted in writing, and the judge, in his chambers, usually gives the papers only cursory examination. No one advocates the other side, either to point out the inadequacy of the government's proof or to keep the warrant within constitutional and legal limits.

So it is not surprising that the percentage of rejected search warrant applications is very small. Yet courts—including even the Supreme Court—occasionally find that when the proof offered in support of a warrant and the terms of the court order are analyzed at a later date (before or during a criminal trial, for example, when the prosecution attempts to use evidence it obtained under the warrant), they fall short of what is constitutionally required. This same pattern has appeared in the history of federal eavesdropping warrants under the provisions of the 1968 law which authorized limited tapping or bugging under court order in the investigation of certain crimes. More than 99 percent of the Justice Department's applications for warrants under this law have been granted, and there have been years when the batting average was 1.000. Yet it now appears, from several court decisions, that the Justice Department's authorization procedure was invalid because the attorney general's executive assistant, rather than Mr. Mitchell personally, was authorizing the taps. And other federal court rulings have found wiretap orders issued by local judges under the 1968 law to be invalid or overbroad.

The danger that a Justice Department eavesdropping warrant application may be routinely rubber-stamped is also aggravated by the ability the prosecutor often has to choose the judge to whom he applies. In most every federal district there are judges who will, in such uncontested proceedings, routinely give the government what it wants. And so the Supreme Court's ruling that the Constitution demands an “independent check upon executive discretion” might, if it depended on the warrant requirement alone, be protective in shadow but not in substance.

This is particularly true because of a significant practical difference between a search for evidence such as a gun or a bloody shirt and a wiretap or bug. The person whose home is visited by police or by federal agents in a search for physical evidence knows that he is the subject of a search when the warrant is served on him (or, if he happens not to be home, when he returns and finds his place ransacked and a copy of the warrant left as an explanation). The government's action is, by that point in time, in the open, and it can be challenged in a civil action for damages or in the defense of a criminal prosecution. An eavesdropping warrant cannot, obviously, be served when the tap or bug is installed without defeating the secrecy which accompanies surreptitious overhearing. If it may be kept secret forever, there is no way for an individual to question or for a court to

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decide whether it was constitutionally or legally permissible.

There are, however, other important safeguards which Congress wrote into the 1968 law and which may, in the long run, prove more effective than judicial warrants in discouraging unbridled electronic surveillance. Many of these protections were designed to force government eavesdropping into the open and make an eavesdrop as known to the the subject of the tap or bug as a physical search of his home for contraband or weapons.

Federal law requires an "inventory" to be served on every subject of a wiretap-by-warrant within 90 days after the tap ends. (Taps and bugs are limited, by law, to a 30-day period and one 30-day extension.) The "inventory" must state when the application was filed, the period of time covered by the court's authorization, and must even be served if an application to eavesdrop is turned down by the judge. Under the federal act, a wire or tape recording must be kept of all overheard conversations, and when the surveillance ends, those recordings must be filed with the court under seal, and may not be destroyed for ten years. The judge may, however, turn them over to the person who was overheard if he determines that to be "in the interest of justice."

The Justice Department would obviously be embarrassed to disclose to those domestic or foreign organizations which it has tapped or bugged that they have been the subjects of such surveillance. It did not reveal the names of the six whose "installations" were no longer monitored after June 19—the date of the Court's decision. The several occasions on which it has been forced to make admissions have grown out of criminal prosecutions of individuals who were overheard, and the information has emerged grudgingly and only to the extent compelled by presiding judges. It is hardly accidental that in each such instance, the recordings of the actual conversations were said to have been erased in the "ordinary course" of the FBI's business—even though, since the 1968 law, the FBI knows that it must keep recordings whenever a tap or bug is authorized by a court warrant.

Asked whether the Department of Justice has taken steps to reinstate the six terminated surveillances under the court-order procedures of the 1968 law, the attorney general's representative at the Senate hearing replied that it has not—and that it had no plans to do so. Considering the importance to national security which the government's briefs in various courts had attached to these taps, the answer was puzzling. Possibly the Justice Department does not believe it has sufficient evidence in any of the six cases to satisfy a judge. Or, what is more likely, the record-retention and service requirements create a serious enough risk of public exposure that the eavesdrops are best written off and forgotten.

Whether they can be dropped so easily presents

another interesting question. Now that the Supreme Court has decided that what the Justice Department was doing to at least six individuals or organizations as of June 19, 1972 (and to unknown others prior to that date) was unconstitutional, may the attorney general keep the identities of those who were subjected to this illegal government action to himself? Congress gave a right to recover damages to "any person" whose telephone conversations have been tapped in violation of the 1968 law. The attorney general may be sued for damages under this provision, but he is secure against suit so long as he never tells those who were tapped that they were subjects of an unwarranted "domestic security" eavesdrop. At the very least, those who were unconstitutionally overheard are entitled to be told, so as to decide for themselves what they will do.

And what of the 27 surveillances which the attorney general views as surviving the Court's decision? Are all but one or two taps or bugs on foreign missions and embassies? Or are other offices included in the Court's exception for "foreign powers or their agents"? The Court went to substantial pains to indicate and repeat that it was expressing no opinion on what power the attorney general may have with respect to foreign governments. It is by no means clear that a system of judicial supervision could not be established for this kind of surveillance, and the Court may—if it is ever called on to do so—require it.

In testimony before the same Senate subcommittee, former Attorney General Ramsey Clark reported that during his tenure he had rejected many requests for foreign intelligence eavesdrops when they were designed only to satisfy curiosity as to what ambassadors or other foreign representatives who had come here on official missions were thinking or saying to each other. He would approve such a surveillance, he said, only if there was reason to believe that the information communicated would "directly and significantly affect the foreign government's power to commit violence upon the United States." This seems a perfectly sound standard for application in a judicial warrant proceeding, particularly now that the Supreme Court has emphatically exploded the Justice Department's pompous and self-important contention that federal judges cannot be trusted as fully as FBI agents, government lawyers and their stenographers with "national security intelligence."

The fact remains that so long as the Department of Justice—even if it be in the person of the attorney general himself—is empowered to draw, without judicial supervision, any line between legal and illegal eavesdropping there will be no "reassurance of the public generally that indiscriminate wiretapping and bugging of law-abiding citizens cannot occur." Yet that was the goal which Justice Powell viewed as of substantial importance, and the Court sought to

achieve it with its unanimous decision.

Its opinion demonstrates that the Court was mindful of what is often overlooked when analogies are drawn between the warrants on which searches are made for physical evidence under the Fourth Amendment to the Constitution and eavesdrop warrants. An eavesdrop "seizes" speech, and speech is protected, as well, by the First Amendment. When, in addition, the subject of the surveillance is a group of political dissenters, there is a double danger to the rights guaranteed by the First Amendment. "The price of lawful public dissent," said Justice Powell, "must not be a dread of subjection to an unchecked surveillance power." And in two passages which are ringingly civil-libertarian, he enumerated the dangers to "constitutionally protected privacy of speech" caused particularly by investigations purporting to protect national or domestic security.

The suggestion in the Court's opinion that different standards might be enacted by Congress for domestic security eavesdrops than for electronic surveillance in

ordinary criminal cases must be understood in this framework. If, as Justice Powell observed, "the warrant application may vary according to the governmental interest to be enforced," it must also consider—as he added in the same sentence—"the nature of citizen rights deserving protection." The rights of the citizens in "security" cases—whether they be domestic or foreign—include not only protection against totally unilateral conduct by those whose job is prosecuting, but also the right to be informed if they are the subjects of a surveillance, to be given the opportunity to hear a full recording of what has been "seized," to know that electronic surveillance cannot be conducted endlessly, and, ultimately, to test, if they choose, the basis for the official action in a court of law. These protections—more than a judge's hurried review of a pile of papers—might overcome what the Court viewed as an understandable "deep-seated uneasiness and apprehension that this capability [to eavesdrop] will be used to intrude upon the cherished privacy of law-abiding citizens."

Old Politicians Who'll See It on Television

Convention Ins and Outs

by Paul R. Wieck

A TV audience of millions will be searching the screens this week for identifiable faces—for familiar politicians and other celebrities. Will they be disappointed? Have their favorites really been left at home to make room for a new breed of activists unrepresentative of the Democratic Party, as some charge? Certainly, the make-up of the convention is different this year. To start with, 86 percent of the 3016 voting delegates will be attending their first convention. For the first time in history, white males "over 30" won't predominate. This year, 37.6 percent (compared to 13 percent in 1968) will be women, 21.1 percent (4 percent in 1968) will be under 30, 15 percent black (5.5), four percent "Latino" and one percent Indian. There's a big overlap there (a black woman under 30 would fit three categories), but the change is still very pronounced, as the McGovern Commission (now Fraser) rules intended that it be. But that these changes have taken place doesn't answer the question about whether the leadership of the

party, the governors, senators and local bosses identifiable to their constituencies have been left home. Rick Stearns, the 27-year-old mastermind of McGovern's effort in nonprimary states, puts it this way: "Most of the identifiable party leadership will be there but with their strength greatly diminished. They'll still be able to deliver some votes but their blocs will be smaller."

Of course, there will be some conspicuous absentees. Unless the convention itself reverses the decision of the credentials committee, Chicago's Mayor Richard Daley will either have to sit in the galleries or go back home to the Bridgeport section of Chicago and watch television. One assumes he has a color set. But the list of left-outs isn't nearly as long as one might suspect. In recent weeks, a good deal has been made over a presumed lack of congressional voices at the convention; however, more up-to-date information than was available to the alarmists tells a different story. With all but five states counted, 41 House members and 17 senators

were on the delegate lists plus a majority of the Democratic governors. Some who wanted to attend as delegates won't be there but for a classic political reason—they bet on the wrong horse. A number of senators, representatives and governors signed up early with the Muskie campaign and went down with it. In Rhode Island, both Senators Pastore and Pell were on the losing Muskie ticket. Muskie's Massachusetts ticket pulled down with it most of the identifiable "regular" party leadership from Mayor Kevin White to House Majority Whip Thomas P. (Tip) O'Neill and even an occasional "new politics" type such as Rep. Michael Harrington. In Ohio, Gov. John J. Gilligan and his organization went down with Muskie as did many allies of Gov. Milton Shapp in Pennsylvania. But they're a special category. As *The New Republic* reported last week, the McGovern camp went all out to make it possible for as many "identifiable" party figures as possible to save face and make the scene in Miami Beach—Sen. Moss and Gov. Rampton in Utah, Sen. Montoya in New Mexico, Senators Tunney and Cranston in California.

Still a lot of members of Congress aren't on the roster of delegates. Why? In case after case, the members themselves declined to attend for practical political reasons. Not a few are from primary states where the primary revealed their constituents as sharply split between the leading candidates—McGovern, Humphrey and Wallace. To attend as a delegate was to make a difficult choice bound to be unpopular with a substantial number of constituents. One southwestern freshman, noting that his district went for Wallace in the primary, politely declined an offer to attend as a Wallace delegate. He allowed as how his place was back home with the voters, not in the front lines getting bloodied up. In other states, it's traditional for officeholders to step aside for "the workers."

Among party bosses who won't be on the convention floor, most bet wrong in primaries. Two obvious examples are Meade Esposito, party chairman in Brooklyn; and Pat Cunningham, party chairman in The Bronx. Both opted for an "uncommitted" role until the McGovern bandwagon was rolling so fast they had to dash down the road to climb aboard. By then, it was clear their "uncommitted" slates were doomed. Both planned to make it to the convention as at-large delegates even though neither would have any delegates to instruct. However, McGovern's managers in New York not only didn't trust them but were faced with the necessity of balancing out the sexes through their at-large selections. Neither Esposito nor Cunningham wears skirts. The uncommitted route was also fatal to state chairman Sol Bontempo in New Jersey; however, in Connecticut, most of the party leaders who wanted to attend were given delegate spots.

One group that fell short of its goal was the leadership of the AFL-CIO. Early this year, AFL-CIO Presi-

dent George Meany and his political operator, Al Barkan, had it be known they wanted 25 percent of the delegates from each state (approximately 750 of the total) to be from the ranks of organized labor. Labor delegates were to be "uncommitted" but with a preference for Humphrey or Jackson. It was an outlandish goal which, had it been realized, would have given Meany and Barkan veto power over convention actions. There are no firm figures on the number of delegates under the thumb of Meany and Barkan. One estimate is that they fell below what labor had in 1968—200 delegates; another estimate puts the number of AFL-CIO members attending this year at over 400 or double the '68 figure. One thing is clear. As many key labor leaders as possible were put on the credentials committee where men like ex-State Sen. Frank King, the AFL-CIO chieftain in Ohio, and Mike Johnson of Pennsylvania played a big role in firming up the anti-McGovern coalition on that committee.

There's a substantial bloc of labor delegates, including more than 60 members of the United Auto Workers (UAW), who aren't playing the Meany-Barkan game. In fact, such labor spokesmen as Ted Barratt, a UAW staff member from Massachusetts, and Victor Gottbaum of the American Federation of State, Municipal and County Employees (AFSMCE), the nation's fastest growing union, spoke against the California challenge as members of the credential committee. The labor split isn't new. It was there in 1960 when the more liberal elements backed the Kennedy bid while the conservative forces within the AFL-CIO split among other candidates. This year, the leadership of several AFL-CIO unions, including AFSMCE, the Oil, Chemical and Atomic Workers (OCAW), the Meatcutters and some connected with unions such as the Amalgamated Clothing Workers and the Graphic Arts are bucking the Meany-Barkan leadership and joining hands with UAW men to fight for a more responsive party. In other words, a candidate like McGovern wouldn't be without labor support in the fall.

But the Meany-Barkan forces still have a good deal of muscle with unions like the Steelworkers, the Machinists, the Rubber Workers and the building trades plus state and local units of the parent body and the powerful Committee on Political Education (COPE) lined up to stop McGovern even if it wrecks the Democratic Party. In fact, after the California challenge, it's the "Barkan crazies," not the "McGovern crazies," who are the real threat to party harmony.

If the identifiable political leaders are appearing before your TV screen in reasonable numbers and the AFL-CIO has several hundred delegates on the floor, who was left home to make room for the women, the youth and the minorities? Gene Pokorney, the young Nebraskan who put together McGovern's organization in Wisconsin and spent the rest of the primary season as a troubleshooter on the other side of the Mississippi, uses Oklahoma as an example to illustrate the

answer. There, tradition allowed county and district party officials, the so-called "middle management" of the party or the "groupies" of regular party politics, to go as delegates. In two Oklahoma districts (Oklahoma City and Tulsa), the McGovern forces took control and elected their own slate. Thus, the "groupies" will be watching color TV. It isn't surprising that a good many "middle management" types didn't make it. To quote Robert Nelson of the Democratic national committee staff, "there was some pretty spirited competition" out in the precincts this year. In fact, record numbers of Democrats helped elect the delegates. Over 20 million voted in the 23 primary states, according to Nelson, and another 600,000 turned out for precinct caucuses in 28 convention states. Since the convention states elected only a few more than 1000 of the delegates, it's clear that only one of every 600 who participated made it through the precinct, county and district meetings to be elected a delegate to the national convention. Given the apathetic condition of the party organization in many of the states, it's easy to understand why middle-level party leaders were left out. Their sponsors—the governors and senators and labor leaders—had to bargain for their own seats and there usually weren't many seats left for white males "over 30." Others who probably suffered in the process this year are the party financiers; however, they're never labeled as such in the statistics so it's difficult to isolate them. However, the big givers tend to fall in the "white male, over 30" class along with the top party officials and the middle-level party officials.

For televising purposes, the changes shouldn't detract. Fat cats and middle management politicians seldom hover around the TV cameras and only a handful of viewers would recognize them anyway. The beards and Afros of the young, the McGovern celebrities like Shirley MacLaine and Marlo Thomas, the prophets of doom from Meany's headquarters, the generous sprinkling of senators and governors, should make for interesting TV. Besides, conventions breed their own celebrities. Remember 1968. Recall Ribicoff pointing his finger at a blustering Daley? Remember the chants for Julian Bond, who became a household name. And Sen. Hughes' nomination of Gene McCarthy? Or Dave Hoeh of New Hampshire getting hauled off to jail and Don Peterson of Wisconsin demanding the convention adjourn until the blood stopped flowing in the streets.

Beyond the convention, will the people left at home forgive and work for the ticket in November? How important are Meany and Barkan and Esposito and Cunningham and Daley to the Democrats in the fall? And can McGovern really crank up his own money machine enough to raise the \$20 million to \$25 million he'll need without the help of the fat cats? It won't be easy but McGovern can be counted on to make all the right gestures. He'll go to Meany and he'll make rousing speeches on jobs and inflation to union conventions (witness his successful appearance before the Electrical Workers). If McGovern's foes are stealing his California votes and seating Daley's 59 as you read this, it's quite possible the party will be split beyond repair. Then, there may be no pieces left to pick up.

Opening Up and Closing Down the Party

Will the Democrats Survive Miami?

by Alexander M. Bickel

A commission on party structure and delegate selection and a commission on rules were set up by the 1968 Democratic national convention in the hope of avoiding a repetition of itself; and everyone immediately began to fear that the two commissions, particularly the first, would help bring about exactly what they were meant to forestall, and more of it even

than in 1968. New requirements would be imposed on the process of delegate selection, the state parties would not yield to them, and the 1972 convention would be a shambles of credentials contests and little else.

It isn't turning out that badly at all. The process of delegate selection has undergone quite a change as a

result of more widespread and genuine compliance by state parties with new requirements than the most sanguine reformer should have permitted himself to expect back in 1969, when the requirements were first promulgated. Silent, absent, or just plain tired potential majorities do no better under the reformed process than they did before. But vigorous, intense partisans can find their way in, and if not met by equal vigor and intensity on the other side, they prevail. That's democracy, and it is better than no democracy. If the previously established leaders of the party want to recapture it, they'll have to hustle, and if they hustle, maybe they can.

Of course there have been numerous credentials contests, but there are standards under which they can be fairly adjudicated, or in light of which they can be compromised and settled, if there's a will. The danger to the survival of the Democratic Party has come not, as feared, from enforcement of new rules of delegate selection, but from a lawless attempt to override them in the California case, and from a misguided proposal to restructure the party into a centralized and disciplined organization on the European style, which Congressmen James O'Hara and Donald Fraser, the current chairmen of the rules and party structure commissions, will bring to the convention floor. Not the reform rules of 1969, but lawlessness and nostrums in 1972—these are the dangers, as unexpected as they are serious.

The most difficult of the credentials contests has been the one concerning Mayor Daley's group of uncommitted delegates from Illinois. Though duly elected in district primaries, these delegates had been slated, which is to say, selected as nominees with party endorsement, by procedures that were effectively proof against insurgency, or against participation by outsiders, as insurgency is now called. So one of the credentials commission's trial examiners found after a hearing. He concluded that requirements on slate-making promulgated in 1969 had been grossly violated. Mayor Daley's people hardly bothered to deny the charge. Their chief argument was that election cures all. It is, in their view, a kind of absolution. But the delegate-selection requirements, unlike some more demanding preceptive systems, do not provide for absolution, by election or otherwise. They are, by contrast, rather like law that way.

Other provisions of the new rules that the Daley

slate was charged with violating deal with discrimination on the basis of race, national origin, sex and age. In addition to forbidding overt discrimination, of course, these provisions require affirmative action. But they are easily misunderstood. Quotas are not called for, and this is explicitly noted. Rather state parties are required to encourage participation, including the "representation of minority groups [and young people and women] on the national convention delegation in reasonable relationship to [their] presence in the population of the State."

It would have been better if the new rules had been content with requiring state parties affirmatively to encourage participation without suggesting quotas, however faintly, even while disowning them, just as it would be better if Senator McGovern quit promising proportional representation to everyone save only the Amish and the Hassidic Jews on everything from the Supreme Court and the Cabinet to the Bureau of Animal Husbandry. But to encourage participation is something else. It has most often not been done in the past; it is right and reasonable, and it should be and is required. The Daley group was found to have scarcely done it, and absolution by election was, again, not available, although remission by some form of compromise might have worked, as it did in a number of other contests.

The trouble with the Daley people is too bad. It may hurt in November, and it goes to show that the rules on nondiscrimination ought to be clarified. But the party will in the long run be strengthened by the decision in the Daley case, as any institution is strengthened which visibly and painfully submits itself to the process of law, and obeys the rules it has made for its own governance. And that is precisely why the lawless decision on the California delegation is such a disaster.

California has long had a winner-take-all primary: the winner of a majority or plurality of the popular vote takes all the delegates, as in the general election he takes all the electoral votes, and as in the general election in all states he would take the governorship or the senatorship. That may be desirable or undesirable, but whichever it is, the 1968 convention knew about it, naturally, and so did the commission on party structure and delegate selection. There is wholly convincing evidence that the convention never intended to decree abolition of the California primary, and there is absolutely conclusive—and uncontroverted—evidence that neither did the commission.

Now, before there were any reform resolutions at the 1968 convention and before there was any commission to implement them, each succeeding quadrennial convention was entitled to be, and in some measure sometimes was, a retroactive law unto itself. The only restraint—but one which was most frequently effective—was a sense of decency in not defeating justified prior expectations. But the 1968 convention

**COMING: The Democrats
In Convention—
Paul Wieck & Ken Bode
Report from Miami Beach**

resolved to make law, and appointed the commission on delegate selection and party structure to make it. That law—the commission's new rules, approved also by the Democratic National Committee—governed the primary campaign. Under the new rules, the California primary was legal, and each candidate had his chance in it. Every man, woman, and child, if any, who voted to overturn the California result on the credentials committee ought to be ashamed of himself and ought never again appeal to law without blushing.

So much for lawlessness. The O'Hara-Fraser nostrum is a document entitled, "A Proposed Charter of the Democratic Party of the United States." It is the latest manifestation of a hankering after one or another form of European parliamentary system which has always afflicted segments of liberal opinion in the United States. Our parties are conglomerates, the thought runs, when they ought to be vertically integrated industries. Then they would be more effective in producing ideologically coherent policies, and the consumer would be more satisfied. As it is, presidential candidates are handicapped in taking a firm and crisp programmatic stance, and when they come into office, they have to start bargaining all over again, because their parties are not lined up behind them in Congress in disciplined ranks. In fact, their parties are no parties, really. They can include everyone from Barry Goldwater to Jacob Javits, or James Eastland to George McGovern, essentially because anyone can join any time on an ad hoc basis for this or the other caucus or election without feeling or pledging long-term allegiance, or if yielding any allegiance, then yielding it to the state party, and not to any national party with an ideology, a soul and a will of its own.

The way to cure all this is to create a national party with a permanent membership, and let it then define and run, not only itself, but what used to be the state parties as well. That is what the proposed charter would do. Membership would be free and open, but only enrolled members could participate in party affairs, and movement in and out for one caucus or one primary would be difficult. Moreover, the party would have clear policies, continuously formed by standing bodies and by a biennial national policy conference. No one who did not accept those policies would feel very keen about joining. Minorities within the party would, no doubt, continuously splinter off, and once gone would stay away, while the party became continuously purer and smaller.

Unless the country went to a multi-party system—to facilitate which we would have to abolish the electoral college—the Democratic Party would go the way of the Whigs, and be replaced by another major party. If we did go to a multi-party system, with everyone pure and tight within his own party, Presidents would be even less able to govern in accordance with a coherent program. Deadlocks between Presidents and Congresses would be even more deadlocked,

compromises would be even messier, and frustration even greater, as we waited for one John Tyler after another to serve out his four years. The temptation would be to abolish the four-year term and make the President responsible to Congress. Then we would be like the third French Republic, or like Italy now. The millennium would have arrived.

None of these horrible things will happen if the proposed O'Hara-Fraser charter is adopted. Not a chance. Rather the Democratic Party will just vanish. It will go down in a glorious ideological sunset.

The two major American political parties exist to form loose and untidy initial coalitions for purposes of electing Presidents and organizing Congresses. The presidential and congressional coalitions are often not the same ones. But they influence each other. They thus help to make the Madisonian system of checks and balances by which we govern less chaotic than it might otherwise be. It is a system that requires us to generate widespread consent before we act, and ensures that no one wields absolute, sovereign—and dangerous—power even for a moment, at least in peacetime.

To perform their function, the American major parties need to be open and substantially overlapping. Ideology, clear unity of purpose and interest—these are for factions, which do not by any means disband after the election. Parties are for gathering in factions and for holding them together, however tenuously, for a time and for some purposes.

The Democratic Party nominated Grover Cleveland in 1892, William Jennings Bryan in 1896 and 1900, and Alton B. Parker in 1904. It nominated John W. Davis in 1924, Al Smith in 1928, and then FDR in 1932. In 1968, George Wallace being absent and John B. Connally present, it ran Hubert Humphrey. Now, with George Wallace apparently back and John Connally gone, it looks as though the party may have been captured by another Bryan. A well-defined national party, dominated by its permanently committed membership in convention and then in policy conference and in between times in a national committee and a national executive committee and then in convention again, is not going to perform in any such fashion. It won't be any vehicle for shifting coalitions. It will be an organized ideology.

The effect of the new delegate-selection rules has been to open up the Democratic Party, to enhance its suitability to its function. The proposed O'Hara-Fraser charter would close it. Oh, the charter has all the populist, participatory trappings anyone could wish, and it would close the party in a different way than Boss Hague's Democratic Party in New Jersey was closed in the 1930s, but it would close it. Fewer and fewer people who agreed totally with each other would come to own it. Perhaps they'd like it, but it wouldn't be much use.

Stanley Kauffmann on theater

Report from Reykjavík

Gudlaugur Rósinkranz is the director of the National Theater in Reykjavík, therefore, the theatrical dean of Iceland. One of the things I like about him is that it never occurs to him that Iceland's theater is less important than any other, no touch of "We're only a small country, but . . ." He is white-haired, slim, dignified, energetic. Now 69, due to retire in September, he has been director here since this theater was built in 1950. I have seen pictures of him through the years, in one of those books that permanent theaters produce regularly, and he looks substantially unchanged since the beginning except for his hair.

Did he run a theater before he came to this one?

"There was no theater to run. No professional theater. This is still the only theater in Iceland."

But there must have been some theatrical activity?

"Very much. Here in Reykjavík there is a fine amateur theater, much older than we are, and every town, every village, has some sort of amateur theater. In fact, they are subsidized."

Amateurs?

"Absolutely. If people start an amateur theater, they get some money for their expenses from the state and from the community. It is a law. Oh, no great sums, but something."

So at least he had a strong interest on which to build.

"A strong tradition, I would say. And many plays. Some of our best writers have always been writing for these amateur groups."

Did he begin with a company of amateurs?

"Some, certainly, but even they had been training. I had been a headmaster in a school where we did many plays, and I believed in training. While they were constructing this building [his office is a large room with a fireplace in a suite of offices backstage] we were training a company. In 1949 and 1950. Then we rehearsed three plays, so that we would open with a repertory. And

here we are, ever since."

Some of the same people are still in the company?

"Many of them. And many of them are wonderful actors."

Does he direct plays himself?

"No, no. We have directors, some Icelandic, some guests from other countries, even one from America. I sit here. I have enough to do. But I watch it all carefully."

And the training school continues?

"Not at the moment. We are awaiting a new law which will combine our school with some private schools that were started, and then we will proceed again."

How many in the company and how many plays a year?

"We have three directors and two designers and 25 actors—besides a few others we get for this or that—and we now do 10 plays a year."

The permanent actors have seasonal contracts?

"Longer. We have three kinds of contracts—I won't go into all details—but the best is for almost a lifetime, with all pensions and insurance and so on."

Has the audience changed in 22 years?

"Very much. Much more demanding. Films and television have helped with that."

Do they like what they see?

He smiles. "They come. We have almost always a full house." (Later I see that this is true; and that there is a much greater proportion of young people than I saw in German theaters last year.)

The repertory seems eclectic. This year they are doing both *Othello* and *Okla-homa*, among others. Any Icelandic plays?

"Many." He is very firm. "Every year we do at least one Icelandic play, this year one by Halldor Laxness, our Nobel Prize winner. One season we did nothing but Icelandic plays, old and new."

Do Icelandic authors write often for his theater?

"I have statistics that I made because I am finishing here soon." He consults some papers. "In 22 years we have done 44 Icelandic plays, and 28 of those were new ones."

So, in the largest sense, it is a community enterprise.

"This is our national theater. And we are a national people."

The theater itself is a moderately ugly modernistic building, on a hill dominating the small city, and is equally unattractive inside. Smallish: it seats about 675. The lounge is decorated with busts and paintings of Icelandic poets and dramatists, none of whose names I know. It feels like being dropped into a fictional country, where the novelist has invented everything, famous poets and all.

My first night there is a bill of two short plays by one of the theater's designers, Birgir Engilberts, who also did the decor. I see the first, *An Ordinary Dream*, which is funny from rise of curtain. The set is a table-top with a potted plant that towers over the two actors and an ashtray with a cigar butt that is almost the size of a man. The dwarfed man in the ashtray and the woman next to the pot are evidently waking with hangovers after a party. They accuse one another of various misdeeds at the party, and as the fantasy progresses,

(continued on page 28)

Films Worth Seeing

Cabaret. Sex and politics and sexual politics in Isherwood's Berlin. Smart Broadway show biz on screen.

A Day in the Death of Joe Egg. An English couple with a spastic child in a picture of wit, sex, and anger, that gets its pathos without bathos.

The Hospital. George C. Scott blasting through Paddy Chayefsky's script about a doctor caught between menopause and medical muddle. Good bitter fun before it collapses.

Tokyo Story. Quite simply, one of the filmgoing opportunities of your lifetime. Yasujiro Ozu's gentle mas-

terpiece, about parents, children, and time.

La Salamandre. Two young writers and a girl about whom they try to write a TV documentary. Intelligent, deft, disturbing—by Alain Tanner, a gifted Swiss newcomer.

The Sorrow and the Pity. Four and a half fascinating hours. Marcel Ophüls' masterly documentary of occupied France and some survivors.

Malcolm X. The power of Malcolm himself is the power of the straightforward documentary derived from his autobiography.

SK

Nicholas Johnson on TV

An Open Letter: Planks for the Platforms

Politics I conceive to be nothing more than the science of the ordered progress of Society along the lines of greatest usefulness and convenience to itself.

—Woodrow Wilson

One of the innovations in the drafting of platforms this year has been the public hearing, with the parties going to the people to solicit their views on important public issues.

I have been asked to participate in such hearings. As an FCC commissioner, however, I am caught up in the judicial machinery at the very heart of the election process—the rulings on “equal time” and “fairness”—and therefore felt it might be better to offer my views in this fashion for all parties’ consideration, rather than as a participant in hearings before one party or another.

This article is a presentation of my views. To keep it to manageable length, each recommendation carries only a very short explanation. There is no particular significance to the order. And, in most cases, present policies of those holding political power are inconsistent with my recommendations.

1) Public broadcasting should be funded on a permanent basis in a manner strictly divorced from political influence. The goal should be to make public broadcasting as important, as innovative, as competitive with commercial broadcasting, and as significant in the life of our society as it is in any of the other Western democracies. This requires a level of funding of no less than \$500 million a year (editor’s note: President Nixon just vetoed a bill authorizing \$65 million for this year and \$90 million next year of federal funds for the Corporation for Public Broadcasting).

2) An adequately funded independent consumer agency should be established

to intervene in any federal or state agency proceeding affecting consumers. The value of independent participation before regulatory agencies is well documented and no longer open to serious question.

3) Federal funding should be provided to public-interest groups, to encourage and sustain their activity. To begin with, 1 percent of all agencies’ budgets should be set aside to pay the reasonable costs of all such “private attorneys general.”

4) The criteria for selecting commissioners for regulatory commissions should be demonstrated commitment to the protection of the interests of consumers and the general public, ability for independent thinking, and no association in the past or future with the industries being regulated. Consumer groups should be accorded at least as much opportunity as industry spokesmen to be consulted, and to veto, such appointments.

5) Children’s programming on commercial broadcasting stations should be cleansed of attention-getting violence and hucksterism aimed at making children superacquisitive consumers.

6) There should be strict regulation of commercial product advertising in all media to eliminate false and misleading advertising, and provision for “counter-advertising” to offer consumers alternative lifestyles and products. When the demonstrable harm from a product outweighs any conceivable benefit from its Madison Avenue merchandising, advertising of it should be banned.

7) The FCC, and other regulatory agencies—which now receive, in total, about $\frac{1}{10}$ of 1 percent of the federal budget—should be provided the financial resources necessary to give the public the full measure of protection it deserves. At a minimum, for example, the FCC’s policy formulation and evaluation capabilities should be on par with those of the private interests, and government agencies, that appear before it.

8) Access to network prime time should be shared by the President with opposition parties, and with the co-equal branch of government, the Congress. Networks should not be seized simultaneously by the President except in true national emergencies.

9) There must be an end to government officials’ criticism of the news coverage given an administration where that criticism is linked with veiled threats of coercive action.

10) All communications between the

executive branch and regulatory agencies should be on the public record, with an end to private executive branch interference in regulatory agency decision-making, interference normally manifested through policy papers, control over budgeting, secret industry meetings, personnel decisions, legislative recommendations, and clearance of reporting forms.

11) A pilot program should be funded to explore the full range of possibilities for the use of cable television to improve and enrich the lives of our citizens.

12) A permanent, nongovernmental national media review organization should be established to evaluate the performance of the press and broadcasting, with particular emphasis on the social effects of broadcast programming.

13) Antitrust and regulatory action should be undertaken to break up the local, regional and national media baronies that have a tight grip on the information flow to the American people.

14) A complete antitrust and regulatory reevaluation of the Bell vertical and horizontal monopoly in telephone communications should be undertaken—including an evaluation of the alternatives: both more competition and public ownership.

15) Improved procedural opportunities should be created for local public-interest groups contesting the granting of licenses to broadcasters by the FCC. Firm performance requirements should be established for licensees who are, under law, trustees of public property.

16) Improved opportunities should be created for access by private citizens to the “soapboxes” of broadcast station microphones and cameras, without the filtration and censorship of licensees.

17) Sufficient public funding of political campaigns should be provided to end the purchase of candidates and offices, with broadcasters required to provide free time to candidates.

18) New technologies, like cable television, should be encouraged in ways designed to provide the maximum public benefit.

19) The federal government should install a “government-800” inward WATS number which would permit any citizen to call his government at no charge, with his call being routed to the proper person in the appropriate agency.

These proposals are feasible. They are reasonable. In many cases they merely carry into effect existing law and policy—or common sense. They are the proposals I will be looking for from candidates and platforms in 1972.

A Regional Persistence

The Enduring South

by John Shelton Reed

(Heath; \$8.50)

You Can't Eat Magnolias

edited by H. Brandt Ayers and Thomas H. Naylor

(McGraw-Hill; \$8.95)

New brands of advice are being passed around these days by the progressives who make it their business to contemplate, and occasionally influence, the destiny of the South. From the late 19th century until quite recently they argued for "industry and diversification," for "catching up with the rest of the country." But now, having cast skeptical eyes on what they're catching up with, they are worrying, just as southern conservatives have long worried, that old qualities of southern life and character are being discarded in the rush to "Americanization," and they are telling their fellow southerners that the region must avoid, before it is too late, the manifold problems that beset the rest of the nation.

These two new books are written by young southerners of the progressive variety, and they make useful contributions to the process of reconsideration. John Shelton Reed, a sociologist at the University of North Carolina, has assembled in *The Enduring South* an impressive body of data that confirms the persistence of marked differences in attitude between white southerners and other Americans. *You Can't Eat Magnolias* is a collection of essays, assembled under the aegis of the L.Q.C. Lamar Society, attempting to assess how the South can make economic and social progress without destroying its traditional values in the process.

Both books are directed to the same question: Is the South still "the South"? Does the South, that is, remain a definable region, part of yet apart from the national whole? Or have its distinctive qualities been swallowed up by television, the automobile, and the other forces that are said to be creating a coast-to-coast lowest common denominator?

On the surface the answer is unrelievably gloomy: the South *looks*, more and more, all too much like the rest of the country. Several contributors to the Lamar Society volume deplore, with good reason, the ribbons of interstates and the sprawling suburbs and the rows of franchised-food establishments that are taking over the South's cities. But appearance is one thing and reality often another; Reed's careful study suggests that the South is clinging with considerable tenacity to the attitudes that give it "subcultural" distinctiveness.

What Reed has done, as my Greensboro colleague Edwin M. Yoder, Jr. points out in an estimable foreword to *The Enduring South*, is to document the continued existence of "a southern 'mind.'" Novelists, historians and journalists from Faulkner to Woodward to Cash have inquired with great perception into the southern consciousness, but their judgments have rested on informed speculation rather than hard evidence—for how, indeed, does one "research" a society's "mind"? Reed has found an answer that seems to work. He has collected the results of a number of opinion surveys taken in the South over the past three decades, and he draws two important conclusions from them: there are clear differences in the ways of thinking of southerners and other Americans, and those differences have persisted during a period in which the pressures on the South to become more "American" have been particularly intense.

Reed isolates three areas in which many observers have felt that North-South differences are strong: "differences in attachment to the local community, in attitudes toward the

private use of force and violence, and in religious and quasi-religious beliefs and practices." His polls disclose that those differences are every bit as striking as had been assumed. Southerners are far more rooted in place than other Americans; Reed calls this, in an uncharacteristic lapse into sociologese, a "localistic orientation." They are also more tolerant of the private use of firearms, though in this the rest of the country seems unfortunately to be catching up with them. And they are more regular churchgoers, who remain loyal to the region's "homogeneous Protestantism."

I would argue that, with the obvious exception of permissiveness toward the use of violence, these are positive attributes which enhance the life of the South. In a nation of near-manic mobility, loyalty to place gives stability to a society and heightens its sense of community—which can lead to narrow parochialism but also to close human ties that cut across racial and economic boundaries. The South's religious fervor has produced plenty of fundamentalist foolishness, but genuine religious faith has given hope and comfort to too many deprived or struggling southerners to be lightly dismissed; it is instructive to recall the remarkable frequency with which southerners who have talked with Robert Coles, white and black alike, have indicated their reliance on church life and the counsel of their ministers.

As these qualities, and others related to them, have become more generally recognized in the South, it has developed a new and unusual self-confidence. The theme of Terry Sanford's short-lived presidential campaign was "The South Can Lead the Nation," and the idea was taken seriously by many southerners. The theme is also central to the thinking of the Lamar Society, an organization of southern progressives that was formed in 1969 and named after a Mississippi leader who, as H. Brandt Ayers describes him, "had been a fire-brand secessionist but who, in

NOTES ON CONTRIBUTORS

NICHOLAS JOHNSON is commissioner, Federal Communications Commission, and author of *How to Talk Back to Your Television Set* (Little, Brown/Bantam). JONATHAN YARDLEY is book editor of the Greensboro Daily News. GEORGE WICKES' latest book is *Americans in Paris* (Doubleday).

the 1870s, became a spokesman for reconciliation between the races and the regions." *You Can't Eat Magnolias* is the society's "manifesto," and as such inevitably will be compared with the Agrarian manifesto of 1930, *I'll Take My Stand*. That politely Luddite document now seems terribly dated, but its literary grace and its plea against the despoliation of the southern land are still noteworthy; there is, alas, all too little literary distinction in *You Can't Eat Magnolias*, but on the whole the quality of its analysis and advice is high.

The book's title reflects one of the principal concerns of its 26 contributors: they want to debunk the romantic myths of the Old South, which have too often distracted the region from its real and immediate problems, and to meet those problems head-on. Thus there is a good deal in the book on such matters as "human resource development," the widespread hunger that continues to plague the South, political alliances and strategies, education and economic institutions—pretty dry reading, much of it, flavored with a decided element of boosterism; but in such pieces as one by Jack Bass on hunger and another by James Clotfelter and William Hamilton on the new populism, there is solid stuff to be found.

What is important about the book is not the repudiation of the past that its title suggests, but the repeated insistence that southerners learn the lessons of that past and preserve the best parts of its legacy. With a frequency that finally becomes irritating, writer after writer quotes C. Vann Woodward's observation that only southerners, among Americans, have experienced defeat, and that this gives them a knowledge of human fallibility and frailty which could serve them well. There is repeated mention of the physical closeness in which southern blacks and whites have always lived and worked, which has given each race a familiarity with the other that may improve the prospects for true integration (unless, it should be added, familiarity really does breed contempt). Perhaps it is all best summed up by Frank Rose, the former president of the University of Alabama, who draws together a small catalogue of the old regional values:

Among these "goods" were personableness, neighborliness, a leisu-
reliness in work and movement, a willingness to share the last cup of meal with one who needed it, personal dignity and courage to

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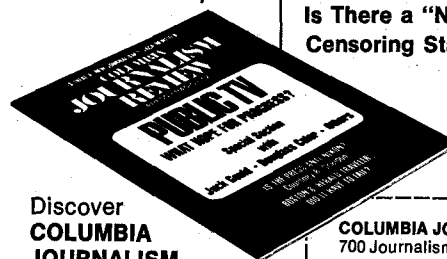
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keep trying when the boll weevil and the drought came, closely knit family ties, and a willingness to practice religion as the minister said it ought to be practiced. The list grows long, and there is much truth in it. Maybe the virtues have been romanticized and generalized too much, and maybe they have been used to conceal a multitude of sins, but the stratum of truth remains. The "good society" for the South would be one in which the spiritual values dominated, and if material blessings could be added without altering the basic way of

life, then well and good.

To "material blessings" Rose ought to have added "and equal opportunity to share in them," but otherwise his is an apt statement of where the South is today—increasingly confident of the value of much of its heritage, increasingly concerned that it may be losing sight of those values. But if John Shelton Reed is right, and I hope he is, the South is not about to stop being "Southern," and its chances of solving its problems in ways the rest of the nation will come to envy may well be rather good.

Jonathan Yardley

One for Bastille Day

Paris Was Yesterday, 1925-1939

by Janet Flanner

(Viking; \$8.50)

Janet Flanner is one of the unsung writers of her generation. —Not that she is unknown. Everyone who reads the *New Yorker* has enjoyed her "Letter from Paris," and in 1966 her *Paris Journal* won the National Book Award. But she has yet to be hailed into the pantheon where she belongs, in the company of such old friends and fellow-Parisians as Hemingway and Gertrude Stein.

The trouble is that Miss Flanner has written all her life in a genre that does not exist. Apart from an early novel, which she herself dismisses as inconsequential, she has written magazine pieces almost exclusively, most of them according to the fairly constricting specifications of the *New Yorker*.

These pieces have been collected into five volumes, the first *An American in Paris* appearing in 1940 at the very moment when France was falling and the Americans were going home. The next two volumes reprinted "profiles" that she had written for the *New Yorker*, short, dense biographies of Pétain, Picasso, Braque, Matisse and Malraux that were at once scrupulously researched and eminently readable. And in recent years the two volumes of her *Paris Journal* brought together an ample selection of her *New Yorker* columns

written between 1944 and 1971.

Individually, when read as they appeared in the *New Yorker*, the letters from Paris were amusing, provocative or moving, but not too impressive. Collectively, in the two massive *Paris Journals*, they became a solid record of French life from the dark days of World War II to the death of General de Gaulle. These last two volumes alone are enough to guarantee Janet Flanner a place among the few historians who will be read by posterity. She is nothing less than the Saint-Simon of our time.

Now an altogether different selection of her pieces has appeared. *Paris Was Yesterday, 1925-1939* not only takes us back to the prewar period but brings out a different aspect of her art, the literary rather than the historical. These are short pieces for the most part, anecdotal rather than narrative, often only a page or a paragraph. Yet again and again they epitomize the period in a moment, a gesture or a glimpse. Janet Flanner has the knack of singling out the significant trifle. Her camera eye usually focuses on details rather than panoramic vistas, but her candid snapshots tell more than full-length documentaries.

Her understated art is all in economy and contrasts, her style terse and epi-

grammatic: "Monet, who fought all his life for his art, suffered the ignominy of dying appreciated." Or, of Isadora Duncan: "Herself grand, she could inspire grandeur in others, a tragic and tiring gift." She also, good journalist that she is, allows facts to speak for themselves when they will. A brief paragraph from her description of the funeral of Marshal Foch is more revealing than all the rest of that brilliant spectacle watched by three million people.

The biggest, least glamorous, and most touching part of the funeral procession was the detachment of *anciens combattants*. By six o'clock they started forming in the Quai de Montebello—peaceful polite little men, wearing fabulous clusters of medals and derby hats slightly too small. By the time they were called into line, they stretched in a solid mass for half a mile. Over their heads hung a thick pall of cigarette smoke, like fumes from a small battle.

Implicit in this scene is a devastating comment, but Janet Flanner refrains from making it.

Her point of view, if she could be said to have one, lies in her constant awareness of ambiguities and incongruities. She puns with Elizabethan bravado. A Stravinsky ballet is presented "under the patronage of the sewing machine heiress Princess Edmond de Polignac (for thus do born Singers and musicians arrange)." At a fancy-dress ball Miss Dolly Wilde appears "in the habiliments of her uncle, Oscar Wilde, and looking both important and earnest." And Isadora excites Miss Flanner to one of her longest flights of fancy, of which the following is but a sample:

She arrived like a glorious bounding Minerva in the midst of a cautious corseted decade. The clergy, hearing of (though supposedly without ever seeing) her bare calf, denounced it as violently as if it had been golden. Despite its longings, for a moment America hesitated, Puritanism rather than poetry coupling lewd with nude in rhyme. But Isadora, originally from California and by then from Berlin, Paris, and other points, arrived bearing her gifts as a Greek. She came like a figure from the Elgin Marbles.

The art of Janet Flanner is all the more

remarkable when the frequent gloom of her subject matter is taken into account. For *Paris Was Yesterday* is not merely elegiac, it is downright funereal: a *Who's Who* for the period, but even more conspicuously a *Who Was Who*. It smells of mortality throughout, the work of a biographer with a touch of gallows humor and an unfailing curiosity about all the circumstances that turn men into dust. She is a specialist in funerals, in *crimes passionnels*, in gruesome murders, swindles, courtroom scenes and executions, though in fairness it should be said that she also celebrates the lyric, and has an unsnobbish zest for all the animation of that period when Paris was proverbially gay.

Politics appears infrequently in the early years, even in the obituaries of politicians, increasingly in the later years as the approaching war replaces the nude revues. Even the longest (and best) murder case concludes as a political allegory, "a small and sinister European entanglement" with a German murderer, French accomplices, American and French victims. Then after a series of international crises and one last summertime round of parties, Paris watches its men go off to war. "Few Frenchmen are thrilled to go forth to die on the Somme as usual—this time for Danzig. Yet all the French seem united in understanding that this war, if it comes, is about the theory of living and its eventual practice." Or to use a grander word, civilization. For that is what the book is all about, from the electrifying debut of Josephine Baker in 1925 to the declaration of war that no true Parisian wanted in 1939.

The official publication date of *Paris Was Yesterday* is Bastille Day, and Miss Flanner is returning to Paris from one of her periodic visits to New York to celebrate the occasion. She should be given the keys to the city, or better yet, the dual citizenship that she has exercised for so many years to the mutual benefit of her two countries—far more intelligently, by the way, than the first citizen Genêt. For half a century this descendant of Hoosier Quakers has been one of the most sympathetic observers of the Paris scene and has served both countries as a sensitive interpreter.

Now 80, she suspects that she has come to the end of what she knew. The central plot of her postwar reportage has been, she said recently, "the stately progress of General de Gaulle." Still, she has kept pace with three of France's five republics and should have no trouble keeping up with the less stately

gait of Pompidou. And even if her work is done it adds up to quite an achievement. The *Paris Journals* demonstrated her astuteness as a historian. This latest collection even more clearly than the others reveals a practitioner of a subtle and demanding art.

George Wickes

In Brief

The Mugging by Morton Hunt

(Atheneum; \$10)

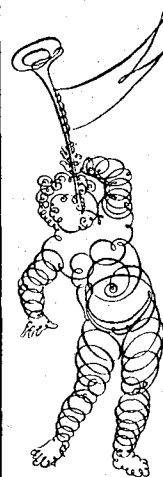
Morton Hunt, who works a field somewhere between journalism-in-depth and popular sociology, has written another thoroughly depressing book. Like his previous ones—*The World of the Formerly Married*, an inquiry into the lives of the walking wounded, and *The Affair*, which is a kind of guided tour or field manual for the varieties of adultery—this one is also valuable and illuminating, and, at nearly 500 dense pages, exhaustive. Before Hunt has completed his odyssey through the fetid half-world of crime and retribution, the reader is ready to surrender all the gorgeous baubles of affluence and return to green pastures, hoe in hand.

Hunt takes as his occasion that peculiarly American, urban, sinister terror—the mugging—and asks all the answerable questions, which aren't necessarily the same as the important ones: Who are the likeliest victims? Who are the muggers? What are the circumstances? Then what happens? And then? And then? Here it all is; not even the names have been changed to protect the innocent.

The victim (there is, you'll be happy to know, a branch of criminology known as "victimology") is an old man of solitary habits and with no friends, living alone in a walkup tenement in a high-crime area of the East Bronx. His social life consisted almost entirely of boasting to virtual strangers in the neighborhood of large sums of money—and at predictable times and unchanging routes walking to a supermarket some distance from his house. Those with a taste for low-magnitude symbolism will want to know that his death was discovered only when the overpow-

ing reek of his rotting, maggoty corpse aroused the suspicions of his neighbors. Junk-money their incentive, the killers—a group of, in this instance, Puerto Rican youths—had cased him perfectly, trapped him in his apartment as he was opening the door, and stabbed him dead in his kitchen.

And we are embarked on the long course of contemporary nightmare: the methods by which the police conduct investigations, and the unending mazes of trial, conviction, appeal, incarceration; intricacies of law, constitutional and criminal, the labyrinthian ways of justice, its outright failures and pyrrhic victories. In tracing out the course of crime and its social costs and consequences, Hunt saturates us with every aspect of every issue remotely pertinent to the one at hand—until, inundated and drowning in muck, we are transfixed by the knowledge carried in our bones from the beginning . . . that we have reached an impasse where customary "solutions" can no longer work; where our anguish can only deepen, and at an exponential rate.



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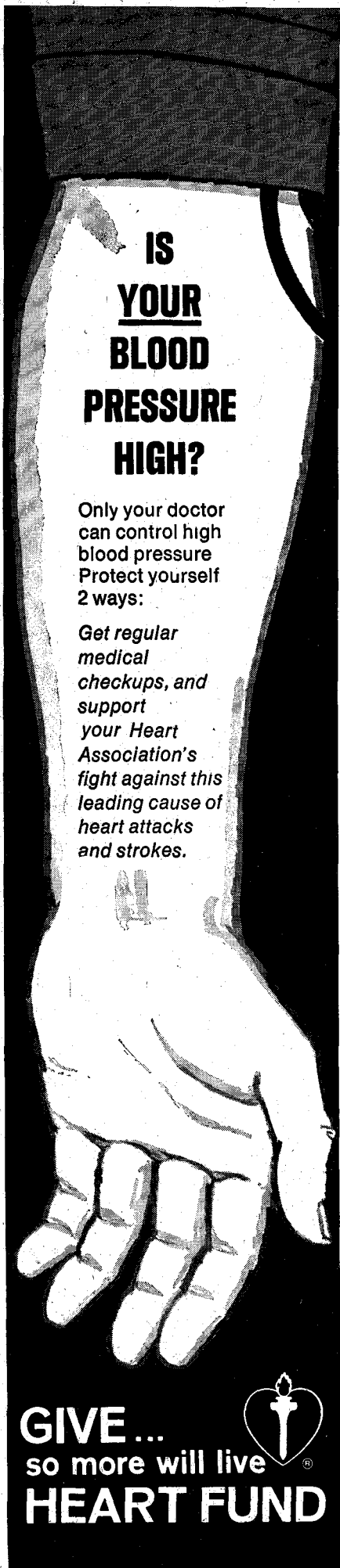
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The Hurricane Creek Massacre

by Thomas N. Bethell

(Perennial Library-Harper & Row; \$1.25)

This book is modestly subtitled, "An inquiry into the circumstances surrounding the deaths of thirty-eight men in a coal mine explosion in eastern Kentucky, December 30, 1970"; but it is more than just an inquiry. It is one of the finest pieces of investigative journalism on a domestic subject in years, and—with Brit Hume's masterful *Death and the Mines* (Grossman)—the best on coal mining.

It is essentially the same report that Bethell wrote and distributed privately within a month after the Hyden disaster, as reported in these pages ("Hunting Scapegoats in Kentucky," Feb. 13, 1971). With precision and patience, Bethell records how the disaster could have been averted, had federal safety laws been followed. It shows how the Nixon administration, which only reluctantly supported the 1969 Federal Coal Mine Health and Safety Act, became one of the major forces in subverting the law. The blame, ultimately, is placed on high officials in the Department of the Interior and the US Bureau of Mines for the massacre—not the accidental deaths, because they could have been prevented—of 38 men, according to Bethell.

Why, for example, did acting Interior Secretary Fred J. Russell publish a new set of fines for violations of the law without giving mine owners a chance to respond? Surely an official in such a high position would know that the coal operators would take him to court for such a procedural mistake, which is exactly what happened. As a result, the full effect of the new law was temporarily suspended, and miners throughout the coal fields of America were left virtually unprotected.

Why did Russell order his inspectors in the field to phone the Washington office of the Bureau of Mines whenever they wanted to close a mine that was in "imminent danger" of disaster? The only plausible answer is that the Washington hierarchy wanted to prevent mines from being closed.

Most important, and really more central to the book, is the question, Why must coal mine disasters continue? The federal law, though somewhat flawed, is basically a good one. Properly enforced, it could result in the prevention

of about 90 percent of all coal mine deaths—the percentage caused through the fault of the operators. As Bethell shows, however, neither government nor coal industry officials seem prepared to deal with the realities of coal safety. That safety will come only if production is slowed down to a reasonable degree, proper equipment is provided, and the value of a man's life is placed above the value of a ton of coal.

The Closed Enterprise System: Ralph Nader's Study Group Report on Antitrust Enforcement

by Mark J. Green with
Beverly C. Moore, Jr. and
Bruce Wasserstein

(Grossman; \$5.95)

By now nearly everyone knows what to expect from Ralph Nader and his study groups: shocking revelations of industry's abuse of the consumer and his environment, governmental indifference, and bold and imaginative proposals for remedies. Such expectations have been faithfully satisfied through a long list of notable exploits, featuring at least 12 major investigations on matters ranging from the auto industry's arrogance and the Food and Drug Administration's ineffectiveness to the unchecked pollution of air and water and the mercenary brutality of nursing homes. This latest contribution, *The Closed Enterprise System*, is in many respects fully in the tradition of its predecessors. It is massive, convincing, and merciless. Yet it must be conceded that its account of monopolistic concentration in industry and the failure of antitrust enforcement is hardly new, and in fact has been delivered by more authoritative hands, countless times before.

Exposures of monopoly have indeed become so common that, were sufficient customers available, a book-of-the-month club could be organized on this topic alone. Just a few weeks ago a major study, *Economic Concentration: Structure, Behavior and Public Policy*, was produced by John M. Blair (Harcourt Brace Jovanovich, \$16.95), whose lifetime contributions in the field place

him with the nation's two or three foremost experts. The authors of the Nader study are all recent Harvard Law School graduates, classes of 1970 or 1971, and had to substitute youthful energy and passion for expertise. Even so, through assiduous library research and intensive interviewing they have managed to put together an impressive report on monopolistic and oligopolistic power and on the impotence of the two official "guardians" of the public interest—the Federal Trade Commission and the antitrust division of the Department of Justice.

A further merit of the Nader organization is that it doesn't simply turn out a book and let the matter rest there. It pursues reform vigorously and stubbornly. Let's go, men!

Do the Poor Want to Work? by Leonard Goodwin

(The Brookings Institution; \$6.50, paper \$2.50)

In an election year, welfare reform, like social security increases, is always a hot issue. Leonard Goodwin has added an interesting dimension to the subject with an important, if slow-reading, study of the poor and work.

Goodwin interviewed more than 4000 persons to find out if the poor, including welfare mothers, their teenage sons, and men and women in federal training programs, are any less interested in work than relatively affluent middle-class families. The complex methodology and analysis is all there, including cautionary discussion of the value of interviewing as a way to the truth about people's feelings, but if you want to get to the heart of his findings, skip to the summaries at the end of each chapter.

Probably his most important finding is that "the poor and the nonpoor, black and white, the young and the old, feel the same way about work." All groups look upon work as good for both body and soul, and all would work even if they had other ways to guarantee a sufficient income. For those who have already had a taste of welfare, Goodwin found that the acceptance of welfare is greater than among those regularly

employed, but still the "work ethic" prevailed.

Even long-term welfare recipients expressed an interest in work. Moreover, the teenage sons of women who averaged 16 years on welfare were found to have just as high an interest in work as middle-class youths.

If so, then why are welfare rolls rising so drastically?

Goodwin rejects two theories about why the poor fail to work. He does not believe that the caste system, which argues that segregation accounts for lassitude, is the answer. Nor does he believe that the poor dwell in a "culture of poverty," a subculture vastly different from that of the regular American middle class. Goodwin pegs the high unemployment and resulting welfarism of the poor on the imperfect opportunity afforded them, especially blacks. Because the poor, especially blacks, have to struggle against so many problems that the white middle class never has to confront, they often find themselves at a disadvantage in the job market and, ultimately, plummet into welfare dependence, becoming thereby defeatist about their job chances.

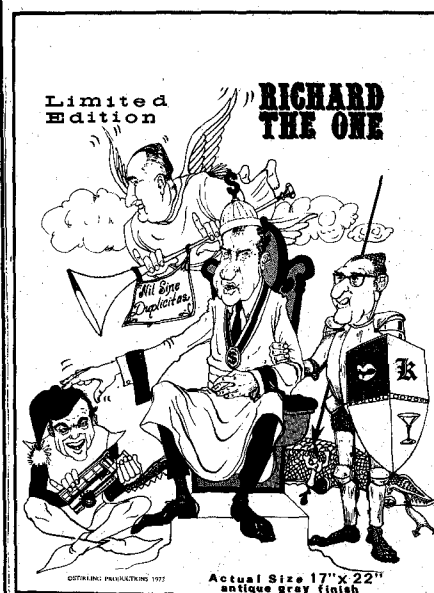
This theory is demonstrated best by Goodwin's study of welfare mothers who participated in the government's Work Incentive Program (WIN). It was found that if these women went through the training program and then failed to get a job, their acceptance of welfare was even greater than when they first joined the program. This result is even more interesting when it is realized that the WIN program succeeds in getting jobs for only about two percent of eligible welfare recipients.

Another significant finding of Goodwin's research was that black women whose families had made it out of the ghetto into relatively affluent sections of the outer city had a great lack of confidence in their ability to succeed in the work world. Even though they were highly oriented toward work, had high aspirations about life, and had succeeded in realizing some of their dreams, these women seemed constantly concerned that any unforeseen circumstance—a sudden illness, a job layoff, an unforeseen debt—could land them right back in the ghetto. Goodwin concludes that more than money is at stake in the enormous enterprise of lifting people out of poverty.

He offers several meaningful policy suggestions. He says that programs should offer an incentive for poor families to keep together, perhaps by train-

ing both husband and wife, assuring good education for the children, and offering day-care services for mothers who want to work. Having two breadwinners in the family can often make the difference between welfare and workfare, according to Goodwin. An even better solution would be a more equitable distribution of the tax burden, for then the poor would have more money to solve their own problems. The poor, he found, will not settle for a guaranteed income just above the poverty level any more than the middle class will, so there is little danger that thousands of them would drop out of the work force if a guaranteed income system were in effect.

But the best way to get the poor to work is to make more jobs available to them, by removing discriminatory barriers of race, education and background. This policy should be coupled with a



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guaranteed income somewhat above the poverty level so that those who cannot succeed in the currently inequitable employment system have something to fall back on. These are not necessarily new ideas, but the structural framework on which they are based—proof that the poor do, indeed, want to work—is unique and worthy of consideration.

Kauffmann, from page 20

they grow increasingly uncertain that they are one another's spouses: they may have each passed out in the wrong apartment. (I've been told the story.) The two actors are quite competent, though they seem to be trading just a bit on the audience's affection for them.

The next production I see at the National is Goethe's *Faust*, directed by a guest, Karl Vibach from the Lübeck theater in West Germany. Fascinating. The three angels of the prologue are golden, with golden faces, too, on pedestals against a black backdrop. Vibach has cast them with an acute ear: their voices orchestrate well.

After this baroque opening, like souvenirs from an Austrian church, Vibach slips us into a moderately mod scheme. As Faust makes his way (on a revolving stage) down the university corridor to his study, he passes students lounging against walls, reading, inspecting posted grades, all dressed in contemporary boots and pullovers that seem somehow timeless. Among the delights that Mefistofeles shows him later are hippies and rock music and female nudity, but the production never seems to slide into mere cleverness.

The chief reasons for this, stronger even than Vibach's grip, are the two principal actors. Róbert Arnfinsson, the Mefistofeles, is outstandingly able, intensely and enjoyably theatrical, in-

telligent, musical. The Faust, Gunnar Eyjólfsson, a handsome man, is among the best classic actors I have seen in my life. Of course, I don't literally understand a word of his, but I know approximately what he is saying, can relish his vocal address and variety; and can certainly see his ability to move and to time his movements, and his power to hold the stage through that beautiful combination of self (Eyjólfsson) and self's emphases provided by an author (Goethe) that are usually at the root of fine acting.

Two extraordinary actors, presumably not the only ones in that theater, playing out their careers in a language understood by only 200,000 people on an island that most of the world flies past on its way to culture.

An added treat. The Reykjavík Festival is on, with visiting artists from (mostly) other Nordic countries. I see the Lilla Teatern of Helsinki, a company of Swedish-speaking Finns, of whom there are still a good number, in their production of *Around the World in 80 Days*. They are exceptionally gifted comedians, exceptionally directed by Bengt Ahlfors, who also made the adaptation from Verne and selected the music. (From Chopin!)

The whole complex story is done with a cast of seven. Four of them play one role apiece—Phileas Fogg, Passepartout, Fix, and Mrs. Aouda—and three of them play about a dozen roles each. Minimal suggestive settings and props are used. (For instance, the British consul in Suez comes in limping, takes off a shoe and pours out a little sand, which tells us that we have moved from the London of the last scene to a land of deserts.) The entire show is like the best European cartooning: highly condensed, sharply profiled, immensely implicative, fun for the audience to collaborate with.

This is the sort of company that, I suppose, Paul Sills would have liked for his Broadway *Story Theater* and did not have. The Sills company was like a correspondence art-school version of the fine draftsmanship in the Lilla Teatern. Almost all of them are delightful, but I must note one especially, Lasse Pöysti, who, besides playing that consul and a lot of other things, is at one point an elephant. No gadgets. He simply comes out (a smallish man) and *behaves* like a patient, kindly elephant. What miming. Down with Marcel Marceau. Up with Pöysti.

Incidentally, I don't see why this pro-

duction couldn't play in an off-Broadway theater, *as is*, and delight others as it did me. No translation or alteration: perhaps just a brief synopsis in the program. My Swedish is something less than fluent, and I had a lovely time.

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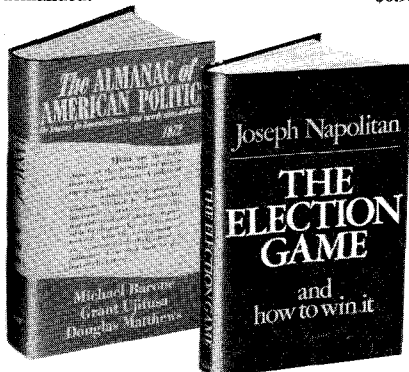
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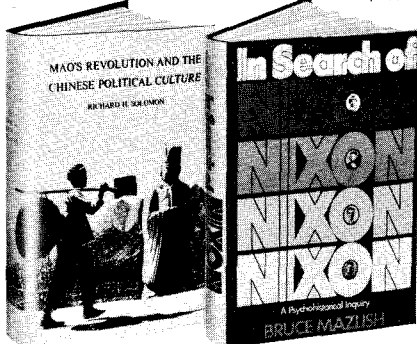
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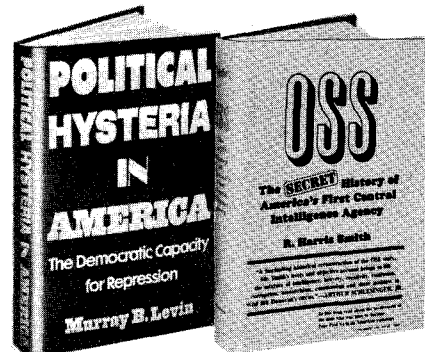


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